

Decision 99-03-014 March 4, 1999

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Citizens Utilities Company, Citizens Newco Company, Citizens Telecommunications Company of California, Inc. (U-1024-C), Citizens Telecommunications Company of the Golden State (U-1025-C), Citizens Telecommunications Company of Tuolumne (U-1023-C), Citizens Telecommunications Company (U-5429-C), and Electric Lightwave, Inc. (U-5377-C) for Authority and Approval of a Transfer of Control.

Application 98-12-002
(Filed December 3, 1998)

OPINION

Summary

Citizens Utilities Company (CUC) seeks approval of a reorganization plan that would establish two separate, independent holding companies, one of them for telecommunications and the other for electric, gas, water, and wastewater services. The application is unopposed. The application is granted.

Description of Transaction

CUC is a diversified, publicly held company providing telecommunications, electric, gas, water, and wastewater services in numerous states. CUC provides these services through subsidiaries divided into two primary businesses: (1) the Public Services Sector includes all of CUC's utility businesses which provide electric, gas, water, and wastewater services, and (2) the Communications Sector includes all of CUC's telecommunications-related businesses, including local exchange, long distance, and competitive local exchange subsidiaries. This application seeks Commission authority to

implement CUC's plan to separate the two business sectors -- public services and communications -- into two separate, independent companies.

CUC's Public Services Sector provides electric, gas, water, and wastewater services to 840,000 customers in 10 states. The Communications Sector provides local exchange services to 900,000 access lines in 12 states,¹ as well as long distance and competitive local exchange services through its own subsidiary and through Electric Lightwave, Inc., in which CUC owns an 83% interest.

CUC is a holding company and does not directly operate or provide utility services in the individual states. In California, CUC's water and telecommunications subsidiaries already operate as separate companies. By Decision (D.) 95-03-017, 59 CPUC2d 37, the Commission approved a restructuring of these subsidiaries into distinct operating companies.²

Under the proposal considered here, CUC after the separation would remain the holding company for the utility businesses (electric, gas, water, and wastewater). CUC would transfer all outstanding stock in the communications businesses to a newly created holding company called Citizens Newco Company (Newco).³ CUC and Newco then would operate as separate and independent entities.

¹ CUC owns local exchange subsidiaries in Arizona, California, Idaho, Montana, Nevada, New Mexico, New York, Oregon, Pennsylvania, Tennessee, Utah and West Virginia.

² The incumbent local exchange carriers operating in California are Citizens Telecommunications Company (CTC) of California Inc., CTC-Golden State and CTC-Tuolumne. The water company operates as Citizens Utilities Company of California (U-87-C).

³ CUC explains that a final name has not yet been selected for the new communications holding company. Newco has been incorporated in Delaware for the purpose of creating an entity to which the capital stock can be transferred.

The transaction is described in more detail in the application and attachments. Essentially, however, CUC seeks authority and approval from this Commission for the following transactions:

- CUC would transfer all of its capital stock and control of its four wholly owned California telecommunications subsidiaries and its ownership of 83% of common stock of Electric Lightwave, Inc., to Newco;
- Newco would split its capital stock, and
- CUC would transfer the capital stock of Newco to CUC's shareholders.

Decision to Separate Into Two Companies

CUC states that since 1935 it has owned and operated subsidiaries providing energy, water, and wastewater services and telecommunications services. Until recent years, regulation of these services was similar.

Today, however, competition in the communications businesses has far outpaced limited competition in energy, water, and wastewater subsidiaries, most of which continue to operate as monopolies with little effective competition. This is true, CUC states, even though the natural gas business has experienced some competition in transmission service, and California and other states have initiated a framework for competition in the electric transmission business.

Telecommunications, however, is becoming highly competitive. CUC notes that this Commission in D.97-09-115 opened the service territory of CTC-California to local competition effective February 1998 for facilities-based carriers and effective April 1998 for resellers.

CUC states:

"Today, the Utility and Communications businesses look very different from each other. These differences create confusion in the investment community, which adversely impacts CUC's stock price. Investors looking for the high risk/high return they associate with the communications industry may not find the utilities business

operations of CUC attractive. Conversely, investors looking for the lower risk/lower return they associate with the utility industry may be dissuaded from investing in CUC because of its communications operations."

Accordingly, CUC's Board of Directors approved the proposed transaction to make CUC the holding company for the utility businesses (excluding communications) and, through a transfer of stock, to make Newco the successor to CUC as the holding company for the communications businesses. CUC states that the separation of the two business lines into two independent companies will better enable each business to pursue appropriate technological, regulatory, and business strategies.

Effect of the Change in California

CUC states that the proposed separation involves only the transfer of control over the communications subsidiaries from CUC to Newco. There will be no change in control over the existing utility businesses. Thus, while CUC has a wholly owned California subsidiary providing water to customers in northern California (CUC-California), the water company is not a party to this application because there will be no change in control involving electric, gas, waste, and wastewater services.

Similarly, CUC states the transaction will not change the fundamental structure of control of the communications subsidiaries. Newco will become the holding company of the three California local exchange carriers and will become the owner of 83% of the stock of Electric Lightwave, Inc. CUC states that no charges are expected in the management or business operations of these companies, employees will continue to hold the same or comparable jobs in all of the subsidiaries. Collective bargaining agreements will remain in effect. No sale or transfer of assets (other than stock) is involved. CUC states that each of the companies will maintain its existing revenue base after the separation.

Discussion

Public Utilities (Pub. Util.) Code § 851 requires Commission authorization before a utility may "merge, acquire, or control...any public utility organized and doing business in this state..." The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

The proposed reorganization here promises improved products and services for California consumers. The separation of the telecommunications businesses from the electric, gas, water, and wastewater businesses will permit the management of Newco and CUC to focus solely on the differing problems and opportunities of their respective businesses. No change in the services of California subsidiaries of the two companies is contemplated. Both Newco and CUC will have the technical, managerial, and financial qualifications necessary to continue operating all of the California subsidiaries.

In Resolution ALJ 176-3006, dated December 17, 1998, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status, a public hearing is not necessary, nor is it necessary to alter the preliminary determination in ALJ 176-3006.

The application is granted, subject to the terms and conditions set forth below.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. CUC is a diversified, publicly held company providing telecommunications, electric, gas, water, and wastewater services in numerous states.
2. CUC's Board of Directors has approved a proposed plan by which subsidiaries would operate under two separate holding companies, one (Newco) for communications services and the other (CUC) for all other utility services.
3. No changes are expected in the management or business operations of the subsidiaries.
4. No sale or transfer of assets (other than stock) is contemplated.
5. Notice of this application appeared in the Commission's Daily Calendar of December 7, 1998.

Conclusions of Law

1. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.
2. The proposed transfer of operating authority is not adverse to the public interest.
3. The application for authority and approval of the transactions set forth in the application should be approved.
4. This order should be made effective immediately in order that applicants may proceed promptly with the authorized transactions.

O R D E R

IT IS ORDERED that:

1. The application is approved.

2. On or after the effective date of this order, Citizens Utilities Company (CUC) is authorized to transfer all of its capital stock and control of its four wholly owned California telecommunications subsidiaries and its ownership of 83% of common stock of Electric Lightwave, Inc., to Citizens Newco Company (Newco); Newco is authorized to split its capital stock; and CUC is authorized to transfer the capital stock of Newco to CUC's shareholders.

3. Applicants shall notify the Director of the Commission's Telecommunications Division in writing of the actual date of transfer of authority, as authorized herein, within 10 days after completion of the transfer. A true copy of the instruments of transfer shall be attached to the notification.

4. Subsidiaries of Newco shall file new tariffs incorporating any changes in rates, services, and management authorized in the transfer transactions.

5. CUC and Newco shall make all books and records available for review and inspection upon Commission staff request.

6. The authority granted in this order shall expire if not exercised within 12 months after the effective date of this order.

7. Application 98-12-002 is closed.

This order is effective today.

Dated March 4, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners